ed. Consequently the Order which I made on September 29, 1984 for the respondent to deposit $52,000/– is set aside. In normal circumstances costs would have followed the event but taking into the account the conduct of both parties in this matter, it is my view that there should be no order as to costs.

Petition dismissed.

Solicitors : *Ong Ban Chai & Co.; Moses & Saga.*

RE COLISEUM STAND CAR SERVICE LTD.; ABDUL KHALIK v. MOHAMED JEE & ORS.

[O.C.J. (Zakaria Yatim J.) February 13, 1985]

[Kuala Lumpur – Originating Motion No. 9 of 1967]

Company Law – Oppression of minority – Majority shareholder ordered to transfer part of his holdings to minority shareholders – Majority shareholder getting excessive payments from the company – Excess amount to be adjusted against price of shares transferred to minority – Companies Act, 1965, s. 181.

In this case Mohamed Jee (since deceased) held 10,909 shares in Coliseum Stand Car Services Limited and was a majority shareholder in the Company. There were two other shareholders with 1364 and 2727 shares respectively. An application by way of Originating Motion under section 181 of the Companies Act, 1965 was moved by the minority shareholders and in *Re Coliseum Stand Car Service Ltd.*[1] the High Court held that the majority shareholder had conducted the affairs of the company without proper regard to minority interest. He ordered the transfer of 4800 shares from the majority shareholder to minority shareholders jointly so as to reduce the voting power of the majority shareholder. He also ordered that an accountant be appointed to determine the value of the shares to be transferred to minority shareholders. The accountant's report was completed on November 18, 1982. The accountant fixed the price of one share at $4.68. The applicants then asked the court to set off the purchase price of the shares against all sums improperly obtained by the majority shareholder which was calculated as $131,228.

Held: the transfer of shares to the minority shareholders should be effected without any payment to the first respondent, the majority shareholder.

Case referred to:

(1) *Re Coliseum Stand Car Service Ltd.* [1972] 1 M.L.J. 109.

ORIGINATING MOTION.

S.D.K. Peddie for the applicant.

V.K. Palasuntharam for substituted first respondent.

Dulip Singh for the second respondent.

Cur. Adv. Vult.

Zakaria Yatim J. : This is an application by way of Originating Motion under section 181 of the Companies Act, 1965. The application was heard by Abdul Hamid J., as he then was. After considering the evidence contained in the affidavits and after hearing the oral evidence of the applicant and a witness called by the first respondent, the learned Judge made the following order:

"1. That 4,800 shares out of the 10,909 shares registered in the names of the First respondent (now deceased) be purchased jointly by the applicant and the representatives of the First Respondent and the Second Respondent from the Estate of the First Respondent;

2. That three Certificates of 1,600 shares each be issued by the Third Respondent abovenamed in the joint names of the Applicant, the Estate of the First Respondent and the Second Respondent covering the said 4,800 shares and that the Applicant be first entered on the Register as senior shareholder in respect of the First of such Certificates, that the Estate of the First Respondent be first entered on the Register as senior shareholder in respect of the Second of such Certificates and that the Second Respondent be first entered on the Register as senior shareholder in respect of the Third of such Certificates;

3. That an Accountant be appointed forthwith by the Senior Assistant Registrar to prepare an up-to-date statement of account of the company's assets and liabilities and to value the shares in the Third Respondent and to assess the purchase price payable for the abovementioned 4,800 shares;

4. That the Accountant so appointed as aforesaid do report to the Senior Assistant Registrar in respect of the value of the shares in the Third Respondent and the purchase price to be paid for the abovementioned 4,800 shares within a period of six (6) weeks from the date of his appointment."

The learned Judge postponed further consideration of the prayers contained in the Motion until after the completion of the Accountant's report. The report of the accountant, Nordin Baharuddin was completed on November 18, 1982.

The facts of the case are clearly set out in the judgment of the learned Judge in *Re Coliseum Stand Car Service Ltd.*[1] The applicant and the second respondent were minority shareholders of a company known as Coliseum Stand Car Service

Limited. The registered address of this company was at 83, Jalan Tuanku Abdul Rahman, Kuala Lumpur. The first respondent held the majority of the shares of the company. Being the majority shareholder, the first respondent ran the affairs of the company without considering the interests of the applicant and the second respondent. To remedy the situation the learned Judge ordered readjustment of the shares as stated in the order quoted above.

According to the order the three shareholders had to purchase 1,600 shares each. The price of a share as stated in the Accountant's report, dated November 18, 1982, was $4.68. This means that the applicant had to pay $7,488.00 for the 1,600 shares. The second respondent, too had to pay the same amount. The total amount to be paid by the applicant and the second respondent was $14,976.00.

The applicant now asks the Court to make an order to allow him and the second respondent to "set-off" against the purchase price of the shares all monies owing to the Company by the first respondent; all sums received by the first respondent from the Company by way of increased salary and by way of managing director or director's fees; and such sum as the Court may think fit and proper to allow by way of rental, for the use of the Company's premises by the first respondent.

Counsel for the applicant contended that the first respondent had used the Company's money without authority. In support of his contention he relied on the finding made by Abdul Hamid J. as stated at page 112 of his judgment:

"That is true but it cannot be ignored that the first respondent was receiving a regular monthly salary of $500 (subsequently increased to $700) for managing the company – even during his 3½ years absence.

It is also apparent that the first respondent had freely exercised the authority as though he alone was the shareholder when he appointed his own son as manager and paid him a monthly salary of $500.

As regards the two loans, one to himself and the other to his son, although it would appear that they had been repaid, there is nothing to show that these loans were made for the benefit of the company. To my mind it constituted an improper use of the company's funds. It was quite improper for the company, controlled entirely by the first respondent, to authorise the use of the company's funds for a purpose unconnected with the company's affairs.

On the evidence before me, it would also appear that the first respondent has not adequately disclosed the circumstances relating to the renting of the first floor of the premises. If it was rented out, where are the rents received? If they had not been rented out then it is for him to show that it was used either by or for the benefit of the company.

In the circumstances of this particular case, I think the applicant has established to my satisfaction that the first respondent had conducted the affairs of the company without proper regard to his (applicant's) interests. To my mind it is not unreasonable to hold that it constituted an oppression on minority shareholders."

According to the affidavit of the applicant dated May 15, 1967, the first respondent received directors fees of $6,000/- per annum from the years 1959 to 1963. In 1964 the fee was increased to $7,200.00 and in 1965 it was further increased to $8,400/-. The total amount of director's fees received by the first respondent without authority was $45,600.00. When the first respondent was away overseas, his son was receiving salaries without authority and the total sum his son received was $21,100/-. So the total sum received by the first respondent and his son was $66,700.00. In addition, the first respondent has also been receiving rent in respect of the first floor of the business premises. In his affidavit dated November 11, 1967, the first respondent admitted that for a period of eight years he received such rents amounting to $64,528.00. Therefore, the total amount received by the first respondent and his son was $131,228.00.

At the material time the first respondent owned 72.73 percent of the issued shares leaving the balance of 27.27 percent for the applicant and the second respondent. Counsel for the applicant stated that out of the $131,228.00, the applicant and the second respondent should be entitled to 27.27 percent of that amount, which is approximately $35,785.88.

Since the applicant and the second respondent owns $35,785.88, Counsel for the applicant asked the Court to deduct $14,976.00 from that amount, being payment in respect of the 3,200 shares allotted to them.

In the circumstances I order that the transfer of the 3,200 shares to the substituted applicant and the second respondent shall be effected without any payment to be made to the first respondent. The substituted first respondents shall pay costs to the substituted applicant and the second respondent. The parties shall be at liberty to apply.

Order accordingly.

Solicitors: *Skrine & Co.; V.K. Palasuntharam; Dulip Singh & Co.*